IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FARAD CONTINUATION SHEET

SECOND APPEAL NO.394 OF 1988

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Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders.	Court's or Judge's orders

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Mr.R.S.Kate for the Appellant
Mr.N.V.Walawalkar for the Respondents

CORAM: A.S.OKA, J.

DATE:SEPTEMBER 3, 2004.

P.C.:

1. Office noting shows that court service notice to Appellant No.1(B) has returned unserved with the remark of bailiff that Appellant No.1(B) is dead. The court service notice of Appellant Nos. 1(I) and 1(J) returned unserved with the remark that they were not found at the time effecting service and therefore notice has been pasted. The Appellants are the original Defendants against the whom the Decree has been passed by the Trial court granting declaration in favour of the original Plaintiffs. The Decree has been confirmed in Appeal.

2. As a result of failure to bring on record the legal representatives of deceased Appellant No.1(B), the Second Appeal stands abated as against the Appellant No.1(B).

3. The Appellant No.1(B) was one of the original Defendants against whom the Decree has been passed which is joint and indivisible. In the circumstances, the Decree passed by the Trial Court and confirmed by the Appellate Court has become final in so far as one of the Defendants is concerned. Even if the Appellants are to succeed in this Appeal, a Decree which is inconsistent with the Decree which stand confirmed as against the Appellant No.1(B) will have to be passed. Hence, Second Appeal cannot be proceeded further.

4. Second Appeal is dismissed with no order as to costs.

Judge.